

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EUSEBIO IKE DEVARGAS,

Plaintiff,

vs.

No. CV 21-00787 MV/JHR

MANUEL GONZALES,
BERNALILLO COUNTY SHERIFF'S DEPARTMENT,

Defendant.

ORDER TO CURE DEFICIENCIES

THIS MATTER is before the Court on the pro se handwritten civil complaint filed by Eusebio Ike DeVargas. (Doc. 1). The Court determines that the pro se filing is deficient because it is not in proper form and Plaintiff has not paid the \$402 filing fee or filed an Application to Proceed in the District Court Without Prepaying Fees and Costs.

Plaintiff is a pretrial detainee in federal custody at the Cibola County Correctional Center. (Doc. 1 at 4). Plaintiff's filing consists of a handwritten civil complaint alleging that Defendant is part of a government racketeering conspiracy because New Mexico elected officials have failed to post a surety bond with the New Mexico Secretary of State. (Doc. 1 at 1). Plaintiff seeks \$20 Million in damages including a RICO escalation penalty, immediate seizure of the Defendant's personal assets, and forfeiture of those assets to Plaintiff. (Doc. 1 at 2-3). He also claims that he seeks forfeiture of all the assets of Defendant's subordinate Deputies, but he is willing to waive that demand if all subordinates resign and Defendant settles this case immediately. (Doc. 1 at 3). Although he does not expressly allege which of his constitutional rights he claims have been violated, Plaintiff's filing may possibly be an attempt to assert prisoner civil rights claims under 42 U.S.C. § 1983. A civil rights complaint under 42 U.S.C. § 1983 is the exclusive vehicle for

vindication of substantive rights under the Constitution. See, *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979); *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (claims against state actors must be brought under 42 U.S.C. § 1983).

The filing is not in proper form to assert civil rights claims. In addition, under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the federal filing fee from the Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Plaintiff has not paid the \$402.00 filing fee or submitted an application to proceed under § 1915.

Plaintiff must cure the deficiencies if he wishes to pursue his claims. Plaintiff must include the civil action number, CV 21-00787 MV/JHR on all papers he files in this proceeding. If Plaintiff fails to cure the deficiencies within thirty (30) days, the Court may dismiss this proceeding without further notice.

IS ORDERED that, within thirty (30) days of entry of this Order, Plaintiff Eusebio Ike DeVargas cure the deficiencies by (1) paying the \$402 filing fee or submitting an Application to Proceed in the District Court Without Prepaying Fees and Costs (including the required 6-month inmate account statement) and (2) filing a prisoner civil rights complaint in proper form.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to mail to Plaintiff, together with a copy of this order, (1) two copies of an Application to Proceed in the District Court without Prepaying Fees and Costs under 28 U.S.C. § 1915, with instructions, and (2) a form prisoner civil rights complaint under 42 U.S.C. § 1983, with instructions.


UNITED STATES MAGISTRATE JUDGE